IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl.Misc.No.12657-M of 2007

Date of Decision: 25.4.2007

Tarlok Singh and another .....Petitioners

Versus

State of Punjab .....Respondent

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.RK Garg, Advocate
for the petitioners

Mr.BS Sra, D.A.G. Punjab.

JUDGMENT

Petitioners Tarlok Singh son of Bishan Singh and Bakhshish Singh son of Kundan Singh have filed the present petition under Section 482 of the Code of Criminal Procedure (hereinafter referred as "the Code") to obtain a twin relief. They have a grievance viz-a-viz the validity of impugned order dated 4.10.2005 (Annexure P4) vide which their summoning under Section 319 of the Code had been ordered. The other relief is qua the validity of the order dated 22.11.2006 vide which issuance of proclamation under Section 82 of the Code had been ordered against them.

The following facts are beyond the pale of controversy. The petitioners-accused are neither named in the FIR nor in the statement of witnesses under Section 161 of the Code. The challan has already been filed. The examination-in-chief in part of PW1 – Sukhdev Singh was

recorded by the learned Trial Magistrate on 11.4.2005 when the PP interrupted the proceedings without completing the examination-in-chief and filed an application under Section 319 of the Code, which (application) came to be allowed by the Learned Trial Magistrate vide order dated 4.10.2005. The said order is re-produced as under for facility of reference:

> "Heard. On application under Section 319 Cr.P.C. Filed by ld.APP for the State summoning Bakshish Singh and Tarlok Singh as accused in this case. Sukhdev Singh PW1 has given incriminating evidence against both these accused Bakhshish Singh and Tarlok Singh. In view of the evidence given by PW1 Sukhdev Singh, there is sufficient evidence on the file to summon accused Bakhshish Singh and Tarlok Singh as accused in this case to face trial for having committing an offence punishable under Section 323/324 read with Section 34 IPC. So this application is allowed. Now Bakshish Singh and Tarlok Singh be summoned for 22.12.2005 for facing the trial in this case."

In so far as the impugned summoning order is concerned, it is invalid on the very face of it. Though, I do not agree with the learned counsel for the petitioners that application under Section 319 of the Code was not competent if the person sought to be summoned as an accused was neither named in the FIR nor in the statement of witnesses under Section 161 of the Code, I am of the view that the manner in which the impugned summoning had been ordered, deserves invalidation. The Public Prosecutor should have at least concluded the examination-in-chief and left it to the defence to either proceed with the cross-examination or to leave it over till after the disposal of application under Section 319 of the Code. As at the moment, even examination-in-chief of Sukhdev Singh is not complete. It cannot, thus, be said that the partly recorded examination-in-chief of

Sukhdev Singh is substantive in character. In that view of things, the impugned order dated 4.10.2005 shall stand quashed. However, it will be open to the prosecution to move a plea under Section 319 of the Code afresh after substantive evidence appears on the file. On the filing of an application afresh under Section 319 of the Code, the learned Trial Magistrate would proceed to dispose it of in accordance with law, uninfluenced by the orders of this Court in the present petition.

In so far as the other order dated 22.11.2006 is concerned, it also deserves invalidation. The relevant orders dated 4.10.2005 and 22.11.2006 stand re-produced in the petition itself. The impugned order has otherwise been placed on file as Annexure P5. As would be apparent from the perusal of the record, summons issued to the petitioners Tarlok Singh and Bakshish Singh for their appearance on 17.3.2006 had not been received served or unserved. They were ordered to be summoned for 12.6.2006. On that date as well, summons issued in the name of petitioners and had not been received. It was on that date that the learned Magistrate proceeded to record his satisfaction that petitioners Tarlok singh and Bakshish Singh had intentionally avoided service and they cannot be served through ordinary process. It was in the light of that satisfaction that the learned Court ordered the issuance of warrants, bailable in the sum of Rs.5,000/- with one surety in the like amount. The matter was adjourned to 19.9.2006. On that date, the processes issued against the petitioners had not been served. The learned Magistrate proceeded to record his finding that the accused are intentionally concealing their presence in order to avoid their arrest.

The adoption of such a course of action cannot be upheld. The

satisfaction of the Magistrate, in the context, has to be recorded on the basis of reasonable material on the file in support thereof. In this matter, there was not enough material before the learned Magistrate to order the issuance of proclamation under Section 82 of the Code against the petitioners accused. No statement of Constable was recorded. No effort had been made to secure their presence by issuance of notice to their sureties. The impugned order is, thus, unsustainable and is ordered to be set aside. The petition shall stand accordingly allowed in toto. Order dated 4.10.2005 passed by Judicial Magistrate Ist Class, Kapurthala on the application under Section 319 of the Code shall stand quashed. However, it will be open to the prosecution to move a plea under Section 319 of the Code afresh after substantive evidence appears on the file. On the filing of an application afresh under Section 319 of the Code, the learned Trial Magistrate would proceed to dispose it of in accordance with law, uninfluenced by the orders of this Court in the present petition. Order dated 22.11.2006 ordering the issuance of proclamation under Section 82 of the Code shall stand set aside. The learned Magistrate may proceed to issue appropriate process to secure the presence of the accused and, then, proceed with the matter in accordance with law.

(S. D. ANAND)
JUDGE

April 25, 2007
SRM